§ 3.—*Distinction drawn between definition of right according to nature and incidents, and the further regulation of the right according to the state of the Forest.*

I shall therefore follow the order of the Burma Act, and first consider some general questions which bear upon the nature and extent of rights, independently of the condition and yield-power of the forest, and which, consequently, can be gone into in the first stage when the recorded admission of a claim is made; and I shall reserve such remarks as I have to offer on the subject of the regulation of rights till afterwards.

SECTION V.—DEFINITION OF RIGHTS ADMITTED ACCORDING TO THEIR INTRINSIC FEATURES.

§ 1.—*Rights conferred by grant in set terms.*

In some cases it may be that the general features of the right are defined already by a written order or grant, and then it will be understood that the grant or order is itself the very best evidence of the nature, extent, and incidents of the right. And it, no doubt, occasionally happens that individuals or villages hold "sanads" or "parwánas" or other documents issued by the Government or some high authority at the time, distinctly recognizing certain practices or enjoyments of forest produce which are, if the grant does not clearly contain words limiting the duration or reserving the power to recall the permission, practically *rights*. Sometimes orders at settlement have been passed, which, in effect, amount to *grants* of forest-rights. Such orders are often in very general terms, and will need to be fairly interpreted so as to enable the rights granted to be defined.

In India there are no technical rules about such 'sanads' and orders: they must be fairly and reasonably interpreted.

In a case in the Bombay High Court known as the Pigondé

case (*Conservator of Forests* vs. *Saubaghyadas*), the Judges quoted as authoritative the ruling of the Privy Council as follows :—[1]

"Upon a question of the meaning of words the same rules of common sense and justice must apply whether the subject-matter of construction be a grant from the Crown or from a subject" * * * * * * "It is always a question of intention to be collected from the language used with reference to the surrounding circumstances. *If those guides fail but not otherwise*, the ancient rule that 'if the King's grant can enure to two intents, it shall be taken to the intent that makes most for the King's benefit' may be followed."

In the case of a forest, I submit this rule is very reasonable; for the forest exists for the public benefit, and if there is uncertainty about the grant, the grant ought not, on general principles, to be held to burden the property more than is necessary. Where the grant can, however, be interpreted by its language and by the circumstances, there the true intent must be allowed.

In the first place, the right may be either claimed as *personal* or *appendant*[2]. In the one case it will be necessary only to record the name, father's name, caste and residence of the claimant, but in the other, it will be needed to record the name or designation, the position and other particulars of the land, building, monastery,

[1] *Lord* vs. *Commissioners of Sydney*. (12, Moore's P. C. cases, 497.)

[2] I may remind the student that these terms have already been explained in the Chapter II, section 7, on Servitudes). Since writing the Chapter the Burma Forest Act has become law, and this does not use the term *appendant* but speaks of the right being "for the beneficial enjoyment of" any land or building. I have also observed, and may here bring the matter to recollection, that, however the European text-books lay down that forest rights are "real" servitudes, *i.e.*, always appendant, or enjoyed in virtue of the holder's connection with some specific land or house, &c., (which is called the *dominant estate*) the same assertion cannot be, at any rate universally, made in India. Facts can be the only guide. A notable instance of a right of grazing being personal and not appendant is offered by the grazing rights in the Kangra forests (Panjab), where graziers come from the higher hill-ranges, many miles away, and during certain seasons of the year occupy, according to ancient custom, certain known tracts or "beats" of the forest in the lower ranges. Here the graziers have the right "in gross," quite independently of their holding any specific land or property. On the other hand, some rights may be, in their nature, appendant, *i.e.*, a right of way or water-course, for it is hardly possible that A. can have a "way" across B.'s land, unless he has some land or house to get to or from.

school or institution to which the right belongs. (Indian Act, sections 12-13.)

§ 2.—*Whether the Produce may be sold.*

It may also be a feature of the right itself (although this is again disallowed by the French, German and Italian laws[3]) that the produce of the right may be sold. In some parts there are jungle tribes, who make at least a part of their living by cutting bamboos, loads of grass and firewood, and carrying them for sale to the villages and towns at the foot of the hills.

This fact is then one of the features of the right which it is important for the Forest Settlement Officer to ascertain and record.

§ 3.—*If not, the Principle to be followed.*

Otherwise, it is a general principle, which it is important to maintain, that the right (if not otherwise defined by the terms of a grant or other specific evidence) is for the right-holder's own use and convenience, and to be measured by his actual personal or domestic wants. In other words, he may have what he wants for his own use, but may not sell or barter the produce obtained[4].

[3] See, for example, Art. 83, Cod. For. But *Meaume* says that it is to be understood that if the forest-owner does not object, there is no reason why the produce should not be sold in some cases (*Meaume*, Vol. I, p. 466, § 407). *Roth* (§ 306) thinks that produce should be saleable if the right is to a fixed quantity (because the forest has to supply *that*, and it cannot matter what is done with it), but not so, of course, where the right is only for the right-holder's own wants and convenience. Otherwise, there would be a fraud on the forest-owner. So *Eding* (p. 111). In English law the rules (which depend on the right being of one kind or another) are not very clear. It would seem generally that the produce of a right "in gross" (personal right) to a fixed quantity of material may be sold (*Cooke*, pp. 39-40). On the whole, the law in the India and British Burma Acts is the most reasonable and best suited to the circumstances of the country. The produce is ordinarily for the owner's own wants, and is not saleable, unless it is an express feature in the right that the produce is taken for sale.

[4] This principle is recognized by all the European laws, as well as by the old Roman Law—Justinian, Lib. II., Tit. V, 1. * * "ad usum quotidianum utatur * * * ut neque domino fundi molestus sit, neque ïs per quos opera rustica fiunt impedimento: nec ulli alii jus quodlibet, aut locare aut vendere aut gratis concedere Potest." (See note at page 32 *ante*.) Meaume, Vol. I, p. 13, § 3, and p. 465, § 407.

This principle is founded on the natural equity of the case. As a forest right exists for the benefit of one person to the diminution of the enjoyment of his property by another (the forest-owner), it is plain that the right ought not to be made more burdensome to the forest estate than is necessary to secure a fair and sufficient exercise of it[5].

If a man might get wood not only for his own household but also to supply the market, he might gradually enlarge his sales to such an extent as to ruin the forest, and swallow up its whole produce.

Where, therefore, it is in the nature of the right itself that the produce is for sale, the Forest Settlement Officer must consider the quantity of produce which the right-holder has a right to (apart from the question whether the forest can properly supply so much). Probably he will take an average based on what the quantity taken by the right-holder, in a series of former years (as far as this is ascertainable), has actually been. Thus the right will be definite, and will not be able to be extended year after year.

§ 4.—*The Right itself inalienable.*

Nor can the right itself be sold or mortgaged, or otherwise alienated. If the person entitled to take for his own use, say, 175 trees of a certain growth every year, does not want the trees, he must leave them growing; he could not lease or sell his right to take these trees to another person. The exception to this is, that if the right is appendant, then (of course) it may be sold along with the property to which it is appendant. So also on the decease of the right-holder, the right passes on by succession to

So the French Civil Code (Art. 630): "*Celui qui a l'usage des fruits d'un fonds, ne peut en exiger qu'autant qu'il lui en faut pour ses besoins et ceux de sa famille.*" So Eding (p. 77) Saxon Mandat of 1813, § 5 (Qvenzel, p. 202).

[5] Merlin (Répertoire v Pâturage) says: "It is a general principle of Roman law, that '*servitus indefinite concessa, ita interpretanda est, ut fundus serviens minimo quam fieri potest, detrimento afficiatur.*' (A general right granted in unlimited terms is so to be interpreted that the estate shall be as little injured as possible by its existence.")

his heirs. This is also provided by section 23 of the India Act and the same number in the Burma Act.

§ 5.—*Right subject to a payment or service.*

Here I may take occasion to mention another feature which may be found to attach to certain forest rights. A right need not be absolutely gratuitous; it may be properly called a *right* and yet the right-holder may have to render some service or make some payment for it[6]. And this may possibly be the case with rights which were distinctly *granted* by some "parwana," order, or sanad, &c., in which the right is conceded as such on certain conditions. Ordinarily speaking, a right which has merely *grown up by prescriptive* exercise would not have a condition attached to it, because then its origin would be not prescriptive but traceable to some person who gave the right and annexed the condition. When a payment is made for the use of forest produce, it would usually indicate that there was no *right*, but that the produce was leased or sold for the money that was paid, and thus was not enjoyed *adversely*, but on *contract*.

§ 6.—*Right for life or lives.*

A forest right may also be, by its origin, permanent, or it may be for the life only of a certain person, or for several lives. This would be, of course, in cases where the right had been specially granted or allowed, in set terms.

[6] See *Roth*, § 293; Meaume, Vol. I, p. 30. Students from Nancy who have read the *procès verbal* of the working scheme of the forest called la Grande Haye, will remember how a certain *commune* was there entitled (by grant of one of the Dukes of Lorraine) to certain wood-rights in consideration of a "*redevance*" of two "*quarterons*" of good oats and a fowl from each household. Here the area over which the right extended was fixed, while the number of households might increase. This led, in the course of time, to the value of the payments exceeding the value of the right. Consequently, the people refused to take the wood, and the right was ultimately adjusted by compensation and got rid of.

This, of course, is quite different from the case where grazing in a forest is sold annually, or for a term of years, and a contractor buys it. The same person might go on buying year after year, but he would acquire no servitude or legal right; his title would be simply *by his contract*, to have his profits, or the way, or the grass, or whatever he bought.